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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,278	02/20/2002	Robert E. Wagner JR.	007274-01	3427
36234 7590 04/21/2008 THE MCCALLUM LAW FIRM, P. C. 685 BRIGGS STREET PO BOX 929 ERIE, CO 80516				
EXAMINER BAUSCH, SARAE L				
ART UNIT		PAPER NUMBER		
1634				
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04/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

CONTINUATION

1. The reply filed 03/31/2008 under 37 CFR 1.116 in reply to the final rejection has thoroughly reviewed but were found insufficient to place the instantly examined claims in condition for allowance. The final office action, mailed 01/30/2008 is maintained.
2. The response asserts on page 6 that the in two separate interviews the examiner suggested claim amendments that would place the case in a position for allowance and each time the amendment were made the Examiner rejected the claims on the same grounds as before. Applicant further states that there in an intent to appeal the final rejection unless Examiner is willing to address the prior office action in a way that is consistent with the interviews and Applicant's own understanding of this invention. It is noted that in neither interview dated 4/5/06 or 10/20/06 did the Examiner state that the claims were in condition for allowance nor was an agreement met between applicants representative and the examiner (see interview summaries mailed 04/05/06 and 10/20/06). Furthermore, in the interview dated 10/20/2006, the unpredictability of the 103 rejection was discussed with regard to the teaching of Wagner. The examiner maintained that Wagner provides evidence that MutS binds triplex formations and therefore it is not unpredictable for MutS to bind a triplex (see interview summary dated 10/20/06). The examiner maintained this reasoning in the final office action mailed 01/30/2008 and throughout the prosecution history and thus has not been inconsistent between the interviews and the prosecution history.
3. The response asserts on page 7 present invention provides detection of a signal that is generated when two or three components of RecA and MutS; probe DNA and MutS; MutS and probe DNA are co-localized, the invention is not concerned with things that do not generate a

signal as the lack of signal is indicative of the absence of two or three components of interest being co-localized. This response has been thoroughly reviewed but not found persuasive. The claims are not limited to a signal being generated when only two or three components are co-localized. The claims recite “wherein a positive signal is generated only when two or more components are co-localized”, thus the claims encompass more than three components which is not taught in the specification. Furthermore, the specification teaches a signal is generated when two or three components are co-localized however the specification does not teach a positive signal is generated. The examiner maintains that the signal, as broadly described in the specification, can be either a positive or negative signal (it is noted that quenching of a fluorophore (i.e. label) may result in a negative signal depending on the fluorophore used and the environment of the fluorophore) as the specification teaches detection of fluorescence which is not limited to only positive signals. Therefore the specification does not teach that a positive signal is generated *only* when two or more components are co-localized. The response asserts that the invention is not concerned with those things that do not generate a signal as the lack of signal is indicative of the absence of two or more component, however this response is not addressing the instantly pending claims nor the rejection of record.

4. The response asserts on page 7, the applicant is confused as to what the examiner thinks about RecA and MutS as she appears to be changing her mind from office action to office action. It is noted that the examiner is not changing her mind from office action to office action however the examiner did erroneously state that MutS is a single-stranded binding protein in the advisory action mailed 01/18/2007.

5. Applicants assert that the Examiner appears to feel that the fact that something is not known to behave in a particular way is actually supporting evidence that it does do the very thing that it is not known to do and assert this makes absolutely no scientific or legal sense to applicant. The sentence on page 14 of the office action in which applicant is relying upon when taken in context with the entire paragraph is not asserting that in general something that is not known to behave in a particular way is actually supporting evidence that it does. The examiner stated that Wagner teaches the breadth of the ability of MutS to work with multiple different triplex formations and duplex structures (see pg. 13 of the action mailed 01/28/2008). One of ordinary skill in the art would expect that MutS would bind not only the various triplex formations comprising DNA, RNA, and PNA as taught by Wagner but also DNA triplexes without DNA analogues. The examiner states then that there is no teaching by Wagner that MutS can not bind a DNA triplex and therefore there is a reasonable expectation of success. Thus the examiner was concluding that based on the knowledge in the art, coupled with the teaching of Wagner there is a reasonable expectation of success that MutS binds DNA triplexes as the teaching of Wagner provides evidence that MutS predictably binds triplexes.
6. Applicant provided a copy of the last response and Declaration that was filed on 10/30/2007. However this response and declaration was previously considered and addressed in the action mailed 01/30/2008 and is not found persuasive for the reasons of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarac Bausch whose telephone number is (571) 272-2912. The examiner can normally be reached on M-F 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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/Sarae Bausch/
Primary Examiner, Art Unit 1634